

EXHIBIT 36

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH CAROLINA
3 GREENVILLE DIVISION
4 EDEN ROGERS AND BRANDY WELCH,
Plaintiffs,
5 vs. C.A. No. 6:19-cv-01567-JD

6 UNITED STATES DEPARTMENT OF HEALTH AND
7 HUMAN SERVICES; XAVIER BECCERA, IN HIS
8 OFFICIAL CAPACITY AS SECRETARY OF THE
9 UNITED STATES DEPARTMENT OF HEALTH AND
10 HUMAN SERVICES; ADMINISTRATION FOR
11 CHILDREN AND FAMILIES; JOOYEUN CHANG, IN
12 HER OFFICIAL CAPACITY AS THE SENIOR
13 OFFICIAL PREFORMING THE DUTIES OF THE
14 ASSISTANT SECRETARY OF THE
15 ADMINISTRATION FOR CHILDREN AND
16 FAMILIES; JOOYEUN CHANG, IN HER OFFICIAL
17 CAPACITY AS PRINCIPAL
18 DEPUTY ASSISTANT SECRETARY OF THE
19 ADMINISTRATION FOR CHILDREN AND
20 FAMILIES; HENRY MCMASTER, IN HIS
21 OFFICIAL CAPACITY AS GOVERNOR OF THE
22 STATE OF SOUTH CAROLINA; AND MICHAEL
23 LEACH, IN HIS OFFICIAL CAPACITY AS STATE
24 DIRECTOR OF THE SOUTH CAROLINA
25 DEPARTMENT OF SOCIAL SERVICES,
Defendants.

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18 VTC 30(b)(6)
DEPOSITION OF: SC DSS, Through its agent:
19 DIANA TESTER
20 DATE: December 16, 2021
21 TIME: 9:32 a.m.
22 LOCATION: Zoom-Columbia, SC
23 TAKEN BY: Counsel for the Plaintiffs
24 REPORTED BY: Roxanne Easterwood, RPR
25 VIDEOGRAPHER: Roosevelt Hamilton

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1 A. It -- you know, it bounces. I'm
2 sorry, my eye. It looks like it went up from 2017
3 to '18 to 2018, 2019, and then it looks
4 like -- I'm having trouble seeing the last column.
5 It looks like it did increase, yes.

6 Q. And do these numbers include the
7 number of families interested in kinship care?

8 A. Yes, they would be kin homes inside
9 those numbers.

10 Q. And -- and could you just briefly
11 explain kinship care?

12 A. Kinship care is a -- it is a relative
13 or fictive kin who steps forward and says that
14 they are able to -- to take care of the child, and
15 they do have to be licensed -- in this report,
16 these are licensed homes -- so that the child is
17 in a safe setting, but with -- with family instead
18 of somebody that they are not familiar with.

19 Q. Is it possible that these numbers
20 increased due to DSS's increased focus on kinship
21 care during the same period, so that 2017 to 2018
22 period?

23 MR. COLEMAN: Object to the form of the
24 question.

25 You can answer.

1 THE WITNESS: You know, kin homes have
2 increased. We, at DSS, believe that's a good
3 thing, because children are being placed with
4 family.

5 BY MS. MADGAVKAR:

6 Q. So -- so that might be responsible for
7 the uptick in numbers we see here?

8 A. It could be.

9 Q. Are you aware of any of the factors
10 that -- that led to this increase in the number of
11 foster homes?

12 A. I do know that the program area has
13 been actively recruiting. There's been these town
14 hall meetings with foster home associations to try
15 to increase foster homes. We, of course, want an
16 increase in family-like settings, but specifically
17 kin.

18 Q. And are you familiar with the
19 executive order Governor McMaster passed in 2018
20 related to faith-based CPAs?

21 A. I would not have recalled specifically
22 on that order. I may be aware of it, but I -- I
23 don't know which order you're referring to, to be
24 honest.

25 Q. So it's -- it's the order that -- that

1 directs DSS not to deny licensure to faith-based
2 CPAs solely on account of their religious identity
3 or religious belief. Does that -- does that sound
4 familiar?

5 A. I -- I think -- I -- I don't know.
6 I -- I'm sure that I've heard of it. I -- you
7 know, I -- quite honestly, I don't keep track of
8 orders like that. I -- I just don't. I'm sorry.

9 Q. Is there any way to know
10 whether -- whether the granting of that order or
11 of the waiver had any impact on the number of
12 foster homes?

13 MR. COLEMAN: Object to the form of the
14 question.

15 But you can answer.

16 THE WITNESS: No. I mean, there would
17 have to be, like, a huge research,
18 statistical-type study to see if there's an
19 association, and -- and, really, I -- I don't even
20 know how they would control all of the variables.

21 BY MS. MADGAVKAR:

22 Q. Right. The DSS didn't look
23 into -- into whether the -- the waiver or the
24 executive order affected the number of foster
25 homes, right? We talked about that earlier.

1 A. Not that I'm aware of, no.

2 Q. So I'm about to -- to move into a
3 different topic. I don't know if -- if now is a
4 good time for a break for you, Ms. Tester, or --

5 A. It would be a lovely break -- time for
6 a break. Thank you.

7 Q. Okay. All right. No problem. So
8 is -- is ten minutes okay?

9 A. Yeah, ten, is good.

10 VIDEOGRAPHER: All right. The time on
11 the monitor is 10:19 a.m. We're going off the
12 record.

13 (A recess was taken.)

14 VIDEOGRAPHER: Time on the monitor
15 is 10:32 a.m., and we're back on the record.

16 BY MS. MADGAVKAR:

17 Q. Okay. So before moving on to -- to
18 the next topic, I just wanted to loop back,
19 briefly. And it might be helpful if you look
20 at -- at Exhibit 1, which is the subpoena. And
21 you can let me know when -- when you have it up.

22 A. I see it.

23 Q. So as we discussed earlier, you're the
24 designee for Topic 9, correct?

25 A. That's correct.

1 Q. And just to make sure I have it right,
2 your -- your testimony was that DSS has no
3 knowledge about whether permitting South Carolina
4 CPAs to restrict eligibility of prospective foster
5 parents based on religion, same-sex relationship,
6 or LGBTQ status had any effect on the number of
7 available foster parents in South Carolina?

8 MR. COLEMAN: Object to the form of the
9 question.

10 But you can answer, if you're able.

11 THE WITNESS: As far as I know, we did
12 not do any studies like this. I did not do any
13 studies like this. I do not know.

14 BY MS. MADGAVKAR:

15 Q. And -- and you're testifying on behalf
16 of DSS, right?

17 A. Yes, I am. Again, I -- I am not aware
18 of it.

19 Q. So you said you're not aware of it,
20 and that means that DSS has not done any kind of
21 study about that infor- -- information, right?

22 MR. COLEMAN: Object to the form of the
23 question.

24 But you can answer.

25 THE WITNESS: I am not aware of DSS

1 doing any study on that particular subject. I

2 -- I -- I am not aware. I'm sorry.

3 BY MS. MADGAVKAR:

4 Q. And -- and you're -- you're the only
5 DSS employee that would have done such a study?

6 A. I really -- I -- I'm not sure. I -- I
7 don't believe that anybody else would have done it
8 at DSS, but DSS is a very large agency. But I'm
9 not aware of anybody having done that study.

10 Q. And as part of your preparation for
11 the deposition, did you attempt to find out if
12 anybody had conducted the study?

13 A. No, I did not, because I -- no -- no,
14 I did not.

15 Q. And did you discuss with anyone, or
16 did you attempt to find out whether anyone at DSS,
17 beyond a specific study, made any effort to
18 examine the impact that these restrictions would
19 have on the number of available foster parents in
20 South Carolina?

21 A. So say your question again. Let me
22 make sure I'm understanding it.

23 Q. Sure. So beyond a -- a specific
24 study, did you attempt to discern from anyone at
25 DSS whether DSS had looked into or examined the